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Charles M. Lizza
William C. Baton
SAUL EWING LLP
One Riverfront Plaza, Suite 1520
Newark, NJ 07102-5426
(973) 286-6700

Attorneys for Plaintiff
Sepracor Inc.

Of Counsel:

Joseph M. O'Malley, Jr.
Bruce M. Wexler
David M. Conca
Eric W. Dittmann
Lynn M. Terrebonne
PAUL, HASTINGS, JANOFSKY & WALKER LLP
75 East 55th Street
New York, NY 10022
(212) 318-6000

SEP 15 2010

AT 8:30

WILLIAM J. WALSH
CLERK

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SEPRACOR INC.,

Plaintiff,

v.

TEVA PHARMACEUTICALS USA, INC.,
et al.

Defendants.

Civil Action No. 09-1302 (DMC)(MF)

**Hon. Dennis M. Cavanaugh, U.S.D.J.
Hon. Mark Falk, U.S.M.J.**

(Filed Electronically)

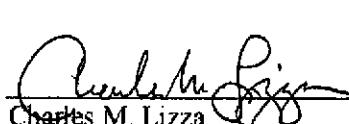
STIPULATION AND [PROPOSED] ORDER OF INFRINGEMENT

IT IS HEREBY STIPULATED AND AGREED, between Plaintiff Sepracor Inc. (“Sepracor”), by their undersigned counsel, and Defendant Teva Pharmaceuticals USA, Inc. (“Teva”), by their undersigned counsel, that:

1. The eszopiclone tablet products described in Teva’s Abbreviated New Drug Application No. 91-169 (“ANDA No. 91-169”) fall within the scope, either literally and/or under the doctrine of equivalents, of claim 1 of United States Patent No. 6,319,926 (“the ‘926 patent”), claims 1, 2, and 8 of United States Patent No. 6,444,673 (“the ‘673 patent”), claims 1, 2, and 6-7 of United States Patent No. 6,864,257 (“the ‘257 patent”) and claims 1-5 of United States Patent No. 7,381,724 (“the ‘724 patent”) (collectively, “the asserted claims”).
2. In the event the asserted claims are not found invalid or unenforceable, the making using, offering for sale, selling, or importation into the United States of the eszopiclone tablet products described in Teva’s ANDA No. 91-169 would constitute infringement of the asserted claims.
3. Sepracor and Teva hereby agree that neither party will seek any additional fact discovery from the other, including, but not limited to, the Teva Israel documents and 30(b)(6) deposition testimony addressed in the parties’ letters to the Court submitted in August and September 2010.
4. This Stipulation is applicable only for purposes of this action and cannot be used by either party as evidence against the other party in any other lawsuit or proceeding, or with respect to any other patent or product.

Dated: September 9, 2010

By:


Charles M. Lizza
William C. Baton
SAUL EWING LLP
One Riverfront Plaza
Newark, New Jersey 07102
(973) 286-6700

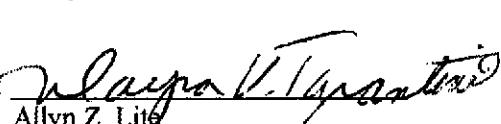
OF COUNSEL:

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New York, New York 10022
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*Attorneys for Plaintiff
Sepracor Inc.*

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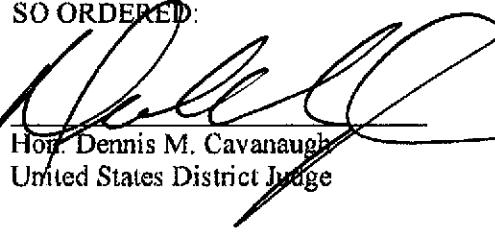

Allyn Z. Lite
Mayra V. Tarantino
LITE DEPALMA GREENBERG LLC
Two Gateway Center, 12th Floor
Newark, NJ 07102
(973) 623-3000

OF COUNSEL:

Mark D. Schuman
Todd S. Werner
Russell J. Rigby
CARLSON, CASPERS, VANDENBURGH
& LINDQUIST
225 South Sixth Street, Suite 3200
Minneapolis, MN 55402
(612) 436-9600

*Attorneys for Defendant
Teva Pharmaceuticals USA, Inc.*

SO ORDERED:


Hon. Dennis M. Cavanaugh
United States District Judge

Date:


9/14/10